

**ANNUAL REPORT
OF THE
COMMISSION ON COURTS**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2008

INDIANA LEGISLATIVE COUNCIL

2008

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Vice-Chairman
Fort Wayne

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Chairman
South Bend

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Milltown

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COMMISSION ON COURTS

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Indianapolis

Kevin Kubash
Bremen

Jacqueline Rowan
Auburn

Staff

Timothy Tyler
Attorney for the Committee

Mark Goodpaster
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 33-23-10 creating the Commission on Courts.

IC 33-23-10-7 charges the Commission with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one public hearing on each request presented to the Commission.
4. Review, report on, and make recommendations concerning any other matters relating to court administration that the Commission determines appropriate, including the following:
 - a. Court fees.
 - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - d. Jury selection.
 - e. Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
 - a. A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - b. If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - i. A draft of legislation implementing the changes.
 - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
 - iii. Summaries of any research supporting the recommended changes.
 - iv. Summaries of public hearings held concerning the recommended changes.

The Legislative Council directed the Commission to study the following topics:

1. Judicial mandates and alternatives to the current system of judicial mandates.

2. Retention of Court of Appeals judges and information distribution to the public regarding retention votes.
3. Potential creation of an additional Court of Appeals panel.
4. Whether judges in St. Joseph County should be selected by election or appointment and, if the selection process is changed, how should it be changed and how should the changes be implemented.
5. Modernization of the system of filing mechanic's liens through the incorporation of a statewide online registry for mechanic's liens.

II. INTRODUCTION AND REASONS FOR STUDY

The legislative branch and the judicial branch are separate and co-equal branches of state government. The Commission on Courts was established to give the Indiana General Assembly adequate time to study legislative proposals that will affect the judicial branch.

III. SUMMARY OF WORK PROGRAM

The Commission met four times during the 2008 interim to study court-related issues.

At the first meeting on August 22, 2008, the Commission heard testimony on or discussed the following topics:

- *A Judicial Technology and Automation Committee (JTAC) update on the JTAC case management system, electronic ticketing program, protective order registry, electronic tax warrant program, electronic marriage license information program, and electronic court statistics program.
- *The electronic publication of the Indiana Code, Indiana Administrative Code, and Indiana Register and the use of noncode provisions.
- *Repealing the law concerning the establishment and operation of county courts.

At the second meeting on August 28, 2008, the Commission heard testimony on or discussed the following topics:

- *An update on the operation of the Indiana Court of Appeals.
- *Improving public access to information concerning retention elections for judges of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court.
- *The judicial nomination process.
- *Trial Rule 60.5, which allows trial courts to "order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court-related functions."

*The need for additional judges in Johnson County.

At the third meeting on October 3, 2008, the Commission heard testimony on or discussed the following topics:

*The merit selection of Lake Superior Court judges, including making the four elected judges of the Lake Superior Court County Division subject to the merit selection process.

*The merit selection of St. Joseph Superior Court judges.

*Replacement of the Allen Circuit Court hearing officer with a magistrate.

At the fourth meeting on October 24, 2008, the Commission heard testimony on or discussed the following topics:

*Creation of a statewide online registry for mechanic's liens.

*Additional magistrates for Marion County courts.

*Expanding the private judge statute.

*Requiring all city and town court judges to be attorneys in good standing admitted to the practice of law in Indiana.

*Expanding the types of persons eligible to participate in alcohol and drug services programs.

*Court fees.

*Commission findings and recommendations for 2008.

*The Commission's Final Report for 2008.

IV. SUMMARY OF TESTIMONY

The Commission heard testimony from the following witnesses concerning the following topics:

Judicial Technology and Automation Committee (JTAC) Update

Justice Frank Sullivan, Jr. of the Indiana Supreme Court, Chairperson of JTAC, stated that JTAC entered into a new contract on June 1, 2007, with Tyler Technologies to implement the statewide case management system. Justice Sullivan said he anticipates that the system will manage 20% to 25% of Indiana cases within the next 12 to 18 months.

Justice Sullivan also discussed other JTAC initiatives, including the electronic ticketing program, the protective order registry, an electronic tax warrant program, an electronic marriage license information program, and an electronic court statistics program.

Justice Sullivan said the \$7 automated record keeping fee was adequate to implement the statewide case management system. However, he stated that the implementation could be achieved faster if JTAC had more funds. He also said that other JTAC initiatives outside the case

management system were mostly funded by federal grants. He said if JTAC had more funds they could take on more of these projects.

Electronic Publication of the Indiana Code, Indiana Administrative Code, and Indiana Register and the Use of Noncode Provisions

Paje Felts, Legislative Counsel of the Indiana State Bar Association (ISBA), discussed issues concerning the electronic publication of the Indiana Code, Indiana Administrative Code (IAC), and Indiana Register.

Betsy DuSold, Associate General Counsel from Eli Lilly and Company, stated that having electronic access to the IAC was a positive thing, but having documents available only in an electronic format could create legal problems and problems with access for persons who don't have a personal computer or a high-speed Internet connection.

Marcia Oddi, publisher of the Indiana Law Blog, said the official version of the Indiana Code should be authenticated, have permanency, be accessible, and be secure.

Ms. Oddi also said some people also believe that if a provision is not in the Indiana Code but is in a noncode section instead, then that provision is not the law. Ms. Oddi also said she believed there were many provisions that had been inappropriately placed in noncode sections.

Jack Ross, Executive Director of the Legislative Services Agency (LSA), stated that the LSA was talking with interested parties concerning these issues and had already addressed some of their concerns. He also said that the legislature had decided to publish the IAC and IR in electronic format only.

Mr. Ross said the Code Revision Commission was charged with overseeing bill drafting and the publication of the Indiana Code. Mr. Ross said there was never any attempt "to hide anything" by placing it in a noncode section.

Mr. Ross said the LSA was willing to work with the Legislative Council, the Code Revision Commission, the State Bar Association, and other interested parties to make the Indiana Code the best it can be.

John Stieff, Director of the Office of Code Revision of the LSA, said the authentication of online legal documents was a national problem and not just an issue in Indiana.

Mr. Stieff said he served on the National Conference of Commissioners on Uniform State Laws and the Commissioners were examining this specific issue. Mr. Stieff said he expected the Commissioners to eventually make legislative recommendations concerning authentication of online legal documents.

Mr. Stieff also said the Acts of Indiana are published every year on the Indiana General

Assembly website and a limited number of hard copies are printed. He said the LSA was in the process of updating its Drafting Manual this interim, including guidelines concerning noncode provisions.

Establishment and Operation of County Courts

Timothy Tyler, Attorney for the Commission, stated that as of January 1, 2009, no county court will exist in Indiana. Mr. Tyler said that since the salary and benefits were the same for a circuit or superior court judge as for a county court judge, but the jurisdiction that could be exercised by a circuit or superior court judge was much greater than that of a county court judge, it is doubtful any county would ever again request the creation of a county court. He said that because of this, the Commission may want to consider repealing the law concerning the establishment and operation of county courts.

Update on the Operation of the Indiana Court of Appeals

Judge John Baker, Chief Judge of the Indiana Court of Appeals, stated that even though production was at an all time high, the Court of Appeals had been able to keep up with outreach programs such as Appeals on Wheels.

Judge Baker also said the Court was the fastest intermediate court of appeals in the United States and he was proud of the work done by the Court.

Improving Public Access to Information Concerning Retention Elections for Judges of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court

Judge Terry Crone of the Court of Appeals stated that he and Judge Cale Bradford of the Court of Appeals had been working with the Division of State Court Administration to establish a retention election website.

Judge Bradford stated that the website would include information such as biographies of judges and justices (including which Governor appointed the judge or justice), opinions written by judges and justices, video of oral arguments, news articles, and external links, including links to judicial retention evaluations conducted by the ISBA.

Douglas Church, President of the ISBA, stated that the ISBA always polled its members concerning justices and judges before retention elections occurred. He said the survey would be conducted electronically beginning this year.

Mr. Church said judges in neighboring states are raising millions of dollars to run in elections. He stated that a recent trial court race in Illinois had resulted in over a million dollars being spent in campaign funds and it is not uncommon in Ohio for appellate level judicial races to result in the expenditure of many millions of dollars. Mr. Church said the ISBA would continue to work

for an independent and courageous judiciary in Indiana.

The Judicial Nomination Process

Rep. Ralph Foley said the Commission may want to examine the statute that creates the current Judicial Nominating Commission to find ways to make it more impartial and independent.

Rep. Foley also said he felt the Commission may want to help the public make more informed decisions by having the Judicial Nominating Commission make a recommendation concerning the retention or rejection of a justice or judge and requiring the placement of that recommendation on the ballot.

Trial Rule 60.5 Judicial Mandate of Funds

Sen. Phil Boots stated that he felt these mandates violated separation of powers provisions under the Indiana Constitution and the Indiana Code. He said that at the county level of government, he believed this power to disburse funds was given only to the county council.

Sen. Boots asked the Commission to consider ways to address this issue, including constitutional amendments and amendments to the Indiana Code. Sen. Boots also stated that one way to address the payment of attorney's fees in judicial mandate cases was to require the Attorney General to represent judges in these cases. He said since judges were state employees they should be represented by the Attorney General and not allowed to hire a private attorney.

Chief Justice Shepard stated that there were constitutional issues concerning the separation of powers present in these mandate cases. He stated that there was a constitutional edict that the courts "shall be open" and a county council could not be allowed to effectively shut down the courts in their county by withholding funds to operate the courts. Chief Justice Shepard continued by stating, however, that if the State was paying all the costs to operate courts instead of only some costs "most of this tension would just go away."

Chief Justice Shepard added that representatives from the Indiana Judges Association and the Indiana Association of Counties had begun meeting to discuss issues raised by TR 60.5. He said the Supreme Court was open to restructuring TR 60.5.

Larry Hesson, President of the Hendricks County Council and former judge, stated that judicial mandates of funds were sometimes necessary but were more commonly a matter of finances. Mr. Hesson said a request for exorbitant legal fees could almost become a "tool of intimidation."

Mr. Hesson said he agreed with the Chief Justice that the State should take the responsibility for paying for the operation of the courts. He stated that the next best solution would be to require the Attorney General to represent judges in mandate cases.

Ed Koerner, member of the Jackson County Council and former county auditor, stated that problems are created when one set of county employees is treated differently from other county employees. He also said this situation could be addressed by the State taking over operation of the courts.

Andrew Berger, Legislative Director of the Association of Indiana Counties, said he agreed that attorney's fees in mandate cases was one of the main issues in this area. He said if the Attorney General represented the judges in these cases, it would remove the "hammer" created by the potential imposition of large attorney's fees.

Mr. Berger said these court ordered mandates restrict other levels of government. Mr. Berger stated that one way for the legislature to address this situation was to specify that court employees are county employees. But, he said the best solution was for the State to take over the operation of the courts.

Need for Additional Judges in Johnson County

Judge Mark Loyd of the Johnson Circuit Court said Johnson County would need one new Superior Court judge in 2012 and another one in 2016. He stated that, in addition to the growth in the population and the caseload in Johnson County, the county now also faces jail overcrowding issues and problems created by the damage to or destruction of county buildings caused by the recent floods.

Merit Selection of Lake Superior Court Judges

Justice Robert Rucker of the Indiana Supreme Court, Chairperson of the Lake County Judicial Nominating Commission, stated that under the current merit selection system, the current composition of the Lake Superior Court more accurately reflects the demographics of Lake County and was "a tribute to diversity."

Justice Rucker stated that the General Assembly should not change the merit selection process in Lake County except to extend it to the four judges of the County Division who are still subject to partisan elections.

Scott Yahne, President of the Lake County Bar Association, stated that the Lake County Bar Association had consistently supported the merit selection process in Lake County. He stated that he supports extending this merit selection process to the four elected judges of the Lake Superior Court County Division.

Roosevelt Allen, a member of the Lake County Board of Commissioners, stated that merit selection of judges in Lake County had caused a dramatic and progressive change to the composition of the Superior Court. He stated that the membership of the current court "mirrors the general population of Lake County."

Mr. Allen continued by stating Lake County had to reduce expenditures and become more efficient and using the merit selection system to choose judges of the County Division would have this result. He added that a recent Lake County "good government" study Commission also recommended making this change.

Judge Julie Cantrell of the Lake Superior Court, County Division III, stated that running in elections took time away from her judicial responsibilities. Judge Cantrell stated that she supported the County Division judges joining the rest of the court in the merit selection process. She said it was necessary for the Lake Superior Court to "think as one court."

Judge John Pera of the Lake Superior Court, Civil Division, Room 6, said that, as Chief Judge of the Lake Superior Court, it was a "daunting task" to make the court a cohesive unit. He said this task was made more difficult because some judges were selected under the merit system and some were elected in partisan elections.

Judge Pera went on to say that consolidating court programs was made more difficult because two different judicial selection processes are used in Lake County. He also stated that he felt that the use of partisan politics to select judges made the system "less credible."

Mike Pagano, Lake Superior Court Magistrate, stated that if the General Assembly made the County Division subject to the merit selection process, the plan was to "grandfather" the four current judges into the merit selection system and have those judges stand for a retention vote when their current terms expired.

Merit Selection of St. Joseph Superior Court judges

Justice Sullivan, Chairperson of the St. Joseph County Judicial Nominating Commission, stated that the General Assembly should also retain the merit selection process for the St. Joseph Superior Court to keep those judges "free from political pressure."

Judge Robert Miller, Jr., Chief Judge of the United States District Court, Northern District of Indiana, stated that since the merit selection system began in St. Joseph County, there had never been "a whiff" of professional, personal, or ethical scandal involving any of the judges selected under the system.

Judge Miller stated that the merit selection process eliminated the "head to head contest" between judicial candidates in which special interest groups are able to elect a judge. He said that with merit selection, special interest groups do not know who might replace a judge who is not retained in office.

Judge Michael Scopelitis, Presiding Judge of the St. Joseph Superior Court, said the merit selection system had served the citizens of St. Joseph County well. He stated that the merit selection system was a model of fairness, impartiality, independence, and accountability to the

law.

Judge Scopelitis went on to say that if persons in St. Joseph County were displeased with the decision of an individual judge, that was not a reason to change the entire system. He said judicial elections allowed for retaliation against court decisions that threatened judicial independence and impartiality.

Judge Michael Gotsch of the St. Joseph Circuit Court stated that he was the only elected judge with general jurisdiction in St. Joseph County. However, he stated that he supported the merit selection system. Judge Gotsch stated that the merit selection system was the best system for selecting judges because it was the most fair and impartial system.

Judge Gotsch said the merit selection system provided the appropriate balance between judicial independence and judicial accountability and it had worked well in St. Joseph County. He said the merit system had provided for the integrity of the judiciary in St. Joseph County and should be retained.

Carl Greci, President of the St. Joseph County Bar Association, stated that judicial independence was important and judges must be able to make unpopular rulings that are free from politics. He said the merit selection system was the best way to facilitate this independence.

Aladean DeRose, outgoing president of the St. Joseph County Bar Association, stated that the County Bar Association did not want to change the current merit selection system. She added that the merit selection system should be extended to other counties.

William Jonas, Jr., President of the ISBA, said the ISBA supported the merit selection system. Mr. Jonas stated that the General Assembly should make the four Lake Superior Court County Division judges subject to the merit selection system and keep the St. Joseph merit selection system the way it is.

Katherine Karczewski, St. Joseph County resident and voter, asked if the merit selection system was so good, why weren't any of the 88 counties that did not have it requesting it.

Ms. Karczewski said her son was Scott Severns, an officer with the South Bend Police Department who had been shot and killed in the line of duty. She said the driver of the getaway car involved in the shooting had received a 45 year sentence while the gunman had received only a 65 year sentence. She stated that "this is not justice." She stated that the courts in St. Joseph County needed to be more accountable to the community.

Replacement of the Allen Circuit Court Hearing Officer with a Magistrate

Judge Thomas Felts of the Allen Circuit Court, asked the Commission to remove his authority to appoint a hearing officer and instead allow him to appoint a second magistrate. Judge Felts said that since this hearing officer position handled Title IV-D child support enforcement cases, part

of his salary was paid by the federal government instead of the county. Judge Felts said that the fiscal impact to the state for creating this magistrate position could be reduced if this magistrate continued to handle these cases and the federal government paid a portion of the salary.

Creation of a Statewide Online Registry for Mechanic's Liens

Mark Shublak, representing Indiana Interactive, discussed proposed legislation that would create a statewide an online construction registry supervised by the Office of Technology to allow for the electronic filing of mechanic's liens. Mr. Shublak said this registration procedure would be phased in incrementally and initially apply only to Class 2 residential structures.

Gretchen White of the Indiana Builders Association stated that this system would allow for the uniform and transparent filing of liens and would allow for the information to be available in "real time" on the Internet.

Martha Breeze, Posey County Recorder, said the system would not be as easy to use as simply getting on line and filing a lien. She said information would still have to be gathered in person at a recorder's office before a mechanic's lien was filed. She said a title search would still have to be conducted for all other types of liens.

Susie Misiniec, Johnson County Recorder, said the Association of Indiana Counties and the Indiana Recorders Association opposed similar online mechanic's lien legislation last year. She said many of the persons that would be affected by this system, including "mom and pop" operations and other small contractors, would not be well served by the system.

Wendy Gibbons of the Indiana Land Title Association said she believed the online mechanic's lien legislation made a substantive change to Indiana law because it altered the way these liens were recorded. She said the system could create unfair advantages and cause lien priority issues.

Courtney Young from the Heating and Air Conditioning Alliance stated that many Alliance members don't have computers, don't use e-mail, and wouldn't pay online filing fees by using a credit card. She said she didn't believe these changes should be made to existing law.

Additional Magistrates for Marion County Courts

Judge Gerald Zore of the Marion Superior Court said Marion County needed additional magistrates because of its increasing caseload. He said the county now employed 27 commissioners.

Judge Zore continued by stating the cost to the State could be offset by paying these magistrates using the juvenile magistrate formula under which the State was responsible for 60% of a magistrate's salary and a county was responsible for 40% of the salary. He said costs could also be offset by the imposition of a redocketing fee in Marion County.

Glenn Lawrence, Marion County Court Administrator, said he estimated 2,000 to 5,000 cases were redocketed in the county each year.

Judge Robert Altice of the Marion Superior Court stated that a full-time commissioner paid by a county made much less than a full-time magistrate paid by the State.

Chief Justice Shepard stated that this issue concerned finance and tax policy as well as judicial administration. He said it was important to design a statewide policy to address the need for additional judicial officers.

Expanding the Private Judge Statute

Judge David Avery of the Allen Superior Court stated that the Alternative Dispute Resolution Committee of the Judicial Conference of Indiana supported expanding the private judge statute to allow all former judicial office holders, including appellate judges and Supreme Court justices, to serve as private judges. He said the Committee also supported expanding the types of cases private judges could hear to include domestic relations cases.

Requiring All City and Town Court Judges to be Attorneys Admitted to the Practice of Law in Indiana

Mike Pagano, Lake Superior Court Magistrate, stated that the Special Courts Committee of the Judicial Conference of Indiana supported legislation requiring that all city and town court judges be trained in the law. Mr. Pagano stated that the primary purpose for doing this is to improve the public perception and confidence in the judiciary.

Judge Ken Pierce of the Jeffersonville City Court stated that his concern with requiring all city and town court judges to be attorneys was that city and town judgeships paid so little it might be difficult to find attorneys to fill all of them.

Judge Roger Huizenga of the Walkerton Town Court said it was hard to find attorneys to run for these judgeships. Judge Huizenga also stated that city and town courts reduced the caseloads on other courts in the county.

Jodie Woods, General Counsel of the Indiana Association of Cities and Towns, said she believed this was a Home Rule issue and should be left up to the local electorate of cities and town to decide. She stated that not all cities and towns have an attorney who could serve as a judge.

Judge David Weckerly of the Delphi City Court said he found it interesting that the Indiana State Bar Association did not have a position on this issue. Judge Weckerly asked "if the system is not broken, why fix it?"

Chief Justice Shepard stated that the recommendation to require all city and town court judges to

be licensed attorneys was the product of judges who hear cases that come out of city and town courts. He said the interest of office holders was not important but the effect city and town courts have on citizens is important.

Chief Justice Shepard also said that while this was not an emergency, the State should move in the direction of requiring all these judges to be licensed attorneys.

Expanding the Types of Persons Eligible to Participate in Alcohol and Drug Services Programs

Linda Brady, Monroe Circuit Court Chief Probation Officer, described certain services furnished by Alcohol and Drug Service Programs that can't be provided to persons who may benefit from them because the persons have not been charged with or convicted of a misdemeanor or felony as required under current law. Ms. Brady asked the Commission to consider expanding the provision of services under the current law.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following findings of fact and recommendations:

1. The Commission recommended that all former holders of a judicial office who served at least four consecutive years as a judge or justice should be allowed to serve as private judges and that private judges should be allowed to hear domestic relations cases. (Approved 9 to 0 by show of hands.)
2. The Commission recommended that a person should be allowed to participate in a court established Alcohol and Drug Service Program if the person is arrested for a misdemeanor or felony or referred to the program by another court, a probation department, the Department of Correction, the Federal Bureau of Prisons, the Division of Mental Health and Addiction, a prosecuting attorney's office, or pretrial services. (Approved 9 to 0 by show of hands.)
3. The Commission recommended that the Automated Record Keeping Fee should be increased from \$7 to \$10 after June 30, 2009, and before July 1, 2013, and decreased to \$7 after June 30, 2013. (Approved 9 to 0 by show of hands.)
4. The Commission found that no county court will exist in Indiana as of January 1, 2009. Therefore, the Commission recommended that the law concerning the establishment and operation of county courts should be repealed. (Approved 9 to 0 by show of hands.)
5. The Commission recommended establishing the Sixth District of the Indiana Court of Appeals of Indiana as of January 1, 2010, with the entire State constituting the Sixth District. (Approved 9 to 0 by show of hands.)

6. The Commission recommended that the four judges of the Lake Superior Court County Division should be nominated by the Lake County Superior Court Judicial Nominating Commission and appointed by the Governor and be subject to the question of retention or rejection by the Lake County electorate every six years. (Approved 9 to 0 by show of hands.)

7. The Commission recommended that the judge of the Allen Circuit Court should be allowed to appoint a second full-time magistrate and the judge's authority to appoint a hearing officer who has the powers of a magistrate and whose salary is paid by the county should be removed. (Approved 9 to 0 by show of hands.)

8. The Commission made the following findings of fact concerning merit selection of judges of the St. Joseph Superior Court:

*The current merit selection system for St. Joseph Superior Court judges has attracted outstanding lawyers to seek and assume judicial careers and has provided those men and women with the ability to rule in a fair and impartial manner without fear of partisan retaliation for their decisions.

*The merit selection system holds these judges accountable to the people of their community for their professional and personal behavior.

*In calling on the General Assembly to provide for the merit selection of judges, Governor Roger Branigan in 1964 said that the State should "offer to the judges ... the promise of reasonable tenure if they perform well, and which will insure them, to the fullest extent possible, freedom from political pressures. The current system for selecting and retaining St. Joseph Superior Court judges achieves the objectives set out by Governor Branigan in 1964.

Therefore, the Commission recommended that the current system of merit selection of judges of the St. Joseph County Superior Court should not be changed. (Approved 7 to 2 by show of hands.)

Rep. Dvorak submitted the following minority statement to the Commission concerning this recommendation:

I respectfully submit a differing opinion from that of the majority.

Of the 92 counties in the state of Indiana, 90 are afforded the opportunity to elect their own Superior Court judges. St. Joseph County is one of those two counties that is treated differently than the rest of the state, and has its Superior Court judges selected by the Governor.

The history behind the present circumstances shows both high-minded intentions

of judicial reform, as well as less noble political motivations. However, in 2008, there exists a significant demand among the citizenry of St. Joseph County to return to a system of elected judges that already exists for the overwhelming majority of Indiana citizens.

Testimony presented to the Commission on Courts from those who favor appointed judges placed an emphasis on the purported independence and autonomy of judges who need not stand for election. The contention is that the system of appointment and retention “removes politics” from the process, and creates a local judiciary free to deliberate without any perceived pressure that political campaigns and elections might place upon them.

Every citizen of Indiana would agree that an independent judiciary is incredibly important to our legal system. However, no evidence presented to the Commission suggested that any of the elected judges in the 90 counties of the rest of the state were anything other than supremely competent and independent judges who enjoy the respect and esteem of their colleagues and their respective communities.

Further, the current system of appointment does not “remove politics” from the process, it simply removes one political decision from the voters, and grants a new political decision to the Governor.

My constituency in St. Joseph County simply wishes to live under the same judicial system enjoyed by the rest of the state. They recognize the importance of judicial impartiality, but also recognize the need for some level of accountability. The election of judges serves that function well in 90 counties across our great state, and St. Joseph County would only like to have the same rights.

I will also point out that four members of this Commission reside in St. Joseph County, but three of them were unable to attend the meeting at which this vote was conducted.

Finally, it is also notable that the seven members of the Commission who voted to recommend that St. Joseph County retain its unique system of appointed judges all reside in counties where they have the opportunity to elect their own judges.

While there may be meritorious aspects to a system of appointed judges, the comparative merits of such a system are not at issue. Under debate was whether there is any rational reason for St. Joseph County to be subject to distinctly different laws than the rest of the state--potentially in violation of the

constitutional prohibition against special legislation. I contend the Commission heard no testimony validating this disparate treatment. Therefore, I will continue to work with the General Assembly to give the citizens of St. Joseph County the opportunity to make their own decision as to how their local judicial system is structured.

9. The Commission recommended that the Legislative Services Agency (LSA) and the Indiana State Bar Association should continue to discuss how to deal with issues concerning noncode provisions of the Indiana Code and, if necessary, the LSA should make recommendations to the General Assembly concerning the use of noncode provisions. (Approved 9 to 0 by show of hands.)

10. The Commission recommended that the General Assembly should defer action concerning Trial Rule 60.5 that allows courts to mandate the expenditure of funds by local governments while the Supreme Court continues to respond to this issue through the adoption of rules. (Approved 9 to 0 by show of hands.)

11. The Commission commended the Division of State Court Administration on the creation of the retention election website. (Approved 8 to 0, with one abstention, by show of hands.)

*Sen. Bray stated that since there were so many unresolved issues concerning the creation of a statewide online registry for mechanic's liens, the Commission would take no further action concerning this issue during this interim.

WITNESS LIST

August 22, 2008, Meeting

Betsy DuSold, Associate General Counsel, Eli Lilly and Company
Paje Felts, Legislative Counsel, Indiana State Bar Association (ISBA)
Marcia Oddi, Indiana Law Blog
Jack Ross, Executive Director, Legislative Services Agency (LSA)
John Stieff, Director, LSA Office of Code Revision
Justice Frank Sullivan, Jr., Indiana Supreme Court, Chairperson of the Judicial
Technology and Automation Committee
Timothy Tyler, Attorney for the Commission, LSA Office of Bill Drafting and Research

August 28, 2008, Meeting

Chief Judge John Baker, Indiana Court of Appeals
Andrew Berger, Legislative Director, Association of Indiana Counties
Sen. Phil Boots
Judge Cale Bradford, Indiana Court of Appeals
Douglas Church, President, ISBA
Judge Terry Crone, Indiana Court of Appeals
Rep. Ralph Foley
Larry Hesson, President, Hendricks County Council
Ed Koerner, Jackson County Council
Judge Mark Loyd, Johnson Circuit Court
Chief Justice Randall Shepard, Indiana Supreme Court

October 3, 2008, Meeting

Roosevelt Allen, Lake County Board of Commissioners
Judge Julie Cantrell, Lake Superior Court
Aladean DeRose, outgoing President, St. Joseph County Bar Association
Judge Thomas Felts, Allen Circuit Court
Judge Michael Gotsch, St. Joseph Circuit Court
Carl Greci, President, St. Joseph County Bar Association
William Jonas, Jr., President, ISBA
Katherine Karczewski, St. Joseph County
Chief Judge Robert Miller, Jr., United States District Court, Northern District of Indiana
Magistrate Mike Pagano, Lake Superior Court
Judge John Pera, Lake Superior Court
Justice Robert Rucker, Indiana Supreme Court, Chairperson of the Lake County
Judicial Nominating Commission
Presiding Judge Michael Scopelitis, St. Joseph Superior Court
Justice Frank Sullivan, Jr, Indiana Supreme Court, Chairperson of the St. Joseph
County Judicial Nominating Commission
Scott Yahne, President, Lake County Bar Association

October 24, 2008, Meeting

Judge Robert Altice, Marion Superior Court

Judge David Avery, Allen Superior Court

Linda Brady, Monroe Circuit Court Chief Probation Officer

Martha Breeze, Posey County Recorder

Wendy Gibbons, Indiana Land Title Association

Mark Goodpaster, Fiscal Analyst for the Commission, LSA Office of Fiscal and Management Analysis

Judge Roger Huizenga, Walkerton Town Court

Glenn Lawrence, Marion County Court Administrator

Susie Misiniec, Johnson County Recorder

Magistrate Mike Pagano, Lake Superior Court

Judge Ken Pierce, Jeffersonville City Court

Sarah Rossier, Deputy Legislative Director, Association of Indiana Counties

Jane Seigel, Executive Director, Indiana Judicial Center

Mark Shublak, Indiana Interactive

Judge David Weckerly, Delphi City Court

Gretchen White, Indiana Builders Association

Jodie Woods, General Counsel, Indiana Association of Cities and Towns

Courtney Young, Heating and Air Conditioning Alliance

Judge Gerald Zore, Marion Superior Court